

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED] TL-N-3860-98

date:

to: Chief, Examination Division, [REDACTED] District
Attn: (b)(7)c [REDACTED], Case Manager

from: District Counsel, [REDACTED]

subject: [REDACTED]
Notice of Contact of Third Parties

Uniform Issue List #7602.00-00

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. It contains confidential information subject to attorney-client and deliberative process privileges and, if prepared in contemplation of litigation, it is subject to the attorney-work-product privilege. Accordingly, the recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination and is not a final case determination. The advice does not resolve the Service's position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum is in response to your request for advice on the applicability of the reprisal exception to the general notice requirement under I.R.C. § 7602(c). It is based, in part, on an informal consultation with Technical Assistant Henry Schneiderman of the National Office of Chief Counsel (CC:DOM:FS).

Mr. Schneiderman has agreed that use of 10-day post-review is proper with respect to this advice. Thus, no actions based on this advice should be taken until we have informed you that the National Office has confirmed the accuracy of the advice.

ISSUE

Where the Service did not make a reprisal determination during the initial contact made by an informant, whether a subsequent contact by the Service with the informant solely for the purpose of a reprisal inquiry constitutes a "contact" subject to the reporting requirements under I.R.C. § 7602(c).

FACTS¹

[REDACTED] (the "taxpayer") is a [REDACTED] company heavily involved in the manufacture of [REDACTED] and [REDACTED]. It has various plants and distribution companies in the United States.

On or about [REDACTED], (b)(7)d [REDACTED]

(b)(7)d [REDACTED]

During this initial contact, the informant advised the Service that he believed that the taxpayer had committed violations of United States tax law. At this meeting between the informant and the Service, the informant provided the Service with certain documents allegedly supporting his claim. During the initial contact, the Service did not ask whether the informant had any reason to believe that disclosing his or her name to the taxpayer may involve reprisal against any person. Since the initial contact, the Service has not had any subsequent contact with the informant.

DISCUSSION

The IRS Restructuring and Reform Act of 1998, Pub. Law 105-206, amended I.R.C. § 7602, in part, by inserting a new subsection "(c) Notice of Contact of Third Parties". Section 7602(c) prohibits Service employees from contacting persons other than the taxpayer about the collection or determination of a tax without first giving the taxpayer reasonable notice that such contacts may be made. One of the primary intentions of Congress

¹This advice is rendered on the basis that all representations and facts in this memorandum are correct. We recommend that you verify this information. If any of the representations and/or facts are incorrect or cannot be substantiated, our advice may need to be modified.

in implementing this section was to ensure that taxpayers were made aware that the Service could contact third parties. This new subsection applies to contacts made after the 180th day after July 22, 1998 (after January 18, 1999).

Section 7602(c)(3)(B) provides an exception to the general rule which prohibits Service employees from contacting third parties without first giving the taxpayer reasonable notice that such contacts may be made where it is determined that "such notice would jeopardize collection of any tax or such notice may involve reprisal against any person..." Where the sole purpose of a subsequent contact initiated by the Service with an informant is to determine whether notice to the taxpayer of the contact "may involve reprisal against any person", it is our opinion that such contact falls outside the general notice requirement to the taxpayer. I.R.C. § 7602(c)(3)(B). We note that if the Service subsequently contacts the informant for the limited purpose of determining reprisal, only to discover that there is no reasonable fear of reprisal against any person, then the Service should end the contact and not re-contact the informant until after giving the taxpayer reasonable notice in advance that third party contacts may be made.

Should you determine that the reprisal exception applies, Form 12175 must be completed with the word "REPRISAL" inserted in the name filed. No third party information should be included on the form.